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THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.48096 of 2022
Date of Decision: 11.11.2024

Mandeep Kaur

..... Petitioner

Versus

Manjit Pal Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Mitul Singh Rana, Advocate
for the petitioner.

Mr. Chander Shekhar Sharma, Advocate
for the respondent.

RAJESH BHARDWAJ, J. (ORAL)

1. Instant petition has been filed praying for the quashing of complaint bearing No.NACT-446-2015, dated 09.10.2015, pending in the Court of Ms. Shivani Garg, learned Judicial Magistrate Ist Class, District Kapurthala (Annexure P-1-copy of complaint) along with all consequential proceedings arising therefrom qua the petitioner as the allegations made in the complaint do not prima facie fulfill the essentials for launching a complaint under Section 138 of the Negotiable Instruments Act, and the petitioner has been erroneously summoned by the learned trial Court vide order dated 30.10.2015 in the said complaint



case (Annexure P-2-copy of the summoning order). Further prayer has been made for staying the further proceedings arising out of the said complaint (Annexure P-1) during the pendency of the present petition.

2. Succinctly the facts of the case are that the respondent has filed a complaint against the petitioner and the co-accused under Section 138 of the Negotiable Instruments Act. It was alleged that all the accused had taken friendly loan of Rs.14,00,000/- from the complainant-respondent and in order to discharge their legal liability, the accused issued cheque bearing No.020209 dated 15.09.2015 for an amount of Rs.14,00,000/- drawn over Axis Bank, Begowal, District Kapurthala in favour of the complainant. It was undertaken that on the presentation of the cheque, the same would be cleared. However on the presentation of the cheque, the same was returned by the Bank with the remarks "Drawers signature differs". The respondent issued a legal notice dated 21.09.2015 through his counsel to the accused, however the amount was not paid and hence, it was prayed that the petitioner and the co-accused be punished for the offence according to the law under Section 138 of the Negotiable Instruments Act. The respondent led the preliminary evidence before the trial Court and finding a prima facie case, learned Judicial Magistrate Ist Class, Kapurthala summoned the petitioner and the co-accused vide impugned order dated 30.10.2015. Hence being aggrieved the petitioner is before this Court by way of filing the present petition.

3. It has been contended by learned counsel for the petitioner that the impugned complaint filed against the petitioner is not



maintainable and thus, her prosecution is nothing but an abuse of the process of the Court. He has submitted that from the bare perusal of the impugned cheque issued, it is apparent that it has been signed by one Tajinder Singh, who is not even the account holder. He has submitted that though the name of petitioner is mentioned on the cheque but the petitioner never signed the cheque issued to the complainant-respondent. He has submitted that as per the statutory provisions of Section 138 of the Negotiable Instruments Act, the essential ingredient for the prosecution of the drawer are not fulfilled. He has submitted that once the petitioner has not signed the cheque issued then her prosecution under Section 138 of the Negotiable Instruments Act is totally an abuse of the process of the Court. He has relied upon the judgment passed by Hon'ble the Supreme Court in "*Aparna A. Shah versus M/s Sheth Developers Private Limited and another*" (2013) 8 SCC 71. He has submitted that the learned trial Court has failed to appreciate the same and thus has illegally summoned the petitioner vide impugned summoning order dated 30.10.2015. He has submitted that the proclamation was issued against the petitioner under Section 82 of Cr.P.C. and thereafter she was declared as proclaimed person vide order dated 03.08.2017. He has submitted that the petitioner was not in India and she was returned to Country on 03.10.2021 and thereafter she came to know about the pendency of the present complaint filed by the respondent. He has submitted that as per the law settled, the impugned complaint and the summoning order being unsustainable deserve to be quashed.



4. Notice was issued in this case to enable the respondent to file his reply. However learned counsel for the respondent has submitted that he does not want to file the reply and wants to address arguments.

5. The prayer is accepted.

6. Learned counsel for the respondent has submitted that the cheque was issued from the account in which the petitioner was a joint account holder. He has submitted that once the petitioner is joint account holder, then she is liable for the prosecution. He has submitted that there being no illegality in the complaint filed and the summoning order, the petition being devoid of any merit, deserves to be dismissed.

7. Heard.

8. On hearing learned counsel for the parties and perusing the record, it is apparent that the petitioner has been prosecuted along with co-accused in the complaint filed by the respondent under Section 138 of Negotiable Instruments Act. The precise submission made by learned counsel for the petitioner is that the petitioner is not the signatory of the cheque issued to the complainant-respondent. Though the name of petitioner is mentioned on the cheque, however admittedly the cheque has been signed by one Tajinderjit Singh, who is husband of Balwinder Kaur. Balwinder Kaur and Mandeep Kaur are the joint account holder. For resolving the controversy, the appreciation of the provisions of Section 138 of Negotiable Instruments Act is relevant, which is as follows:

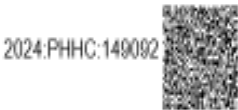
- a) A person must have drawn a cheque on a bank account maintained by him.



- b) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability:
- c) That cheque has been presented to the bank within three months from the date on which it is drawn
- d) That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or issuance of stop payment instructions by the Drawer to the Drawee Bank or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank or when there is a deliberate mismatch of signature of the cheque;
- e) The payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid:
- f) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice:
- g) The complaint is to be filed before the Court of Chief Judicial Magistrate/Chief Metropolitan Magistrate within one month of the date of expiry of the 15 days of receipt of the notice.

9. On the perusal of the statutory provisions of (a), it is apparent that the person must have drawn the cheque on a bank account maintained by him. Admittedly the cheque issued has been signed by Tajinderjit Singh and not by the petitioner Mandeep Kaur. Thus the petitioner has not signed the cheque for the discharge of any debt or other liability.

10. Hon'ble the Supreme Court in "*Aparna A. Shah versus M/s Sheth Developers Private Limited and another*" (2013) 8 SCC 71 has



held *that it is only the drawer of the cheque who can be prosecuted. In the case in hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains name of the appellant and her husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in- chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque.*

11. Weighing the facts and circumstances of the present case, on the anvil of the law settled, it is an admitted position that the petitioner has not signed the cheque and hence her prosecution in the impugned complaint is totally against the law settled.

12. Thus in the overall facts and circumstances, this Court finds that the impugned complaint and the summoning order are unsustainable in the eyes of law and thus, the same i.e. complaint bearing NACT-446/2015 pending in the Court of Ms. Shivani Garg, learned Judicial Magistrate Ist Class, District Kapurthala and summoning order dated 30.10.2015 are hereby quashed qua the petitioner only.

13. Petition stands allowed.

11.11.2024
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(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No